

You means a lessee, operator, or other person who pays royalties under this subpart.

[72 FR 71241, Dec. 17, 2007, as amended at 73 FR 15890, Mar. 26, 2008; 78 FR 30204, May 22, 2013]

§ 1206.52 How do I calculate royalty value for oil that I or my affiliate sell(s) or exchange(s) under an arm's-length contract?

(a) The value of oil under this section is the gross proceeds accruing to the seller under the arm's-length contract, less applicable allowances determined under §§ 1206.56 and 1206.57. If the arm's-length sales contract does not reflect the total consideration actually transferred either directly or indirectly from the buyer to the seller, you must value the oil sold as the total consideration accruing to the seller. Use this section to value oil that:

(1) You sell under an arm's-length sales contract; or

(2) You sell or transfer to your affiliate or another person under a non-arm's-length contract and that affiliate or person, or another affiliate of either of them, then sells the oil under an arm's-length contract.

(b) If you have multiple arm's-length contracts to sell oil produced from a lease that is valued under paragraph (a) of this section, the value of the oil is the volume-weighted average of the total consideration established under this section for all contracts for the sale of oil produced from that lease.

(c) If ONRR determines that the value under paragraph (a) of this section does not reflect the reasonable value of the production due to either:

(1) Misconduct by or between the parties to the arm's-length contract; or

(2) Breach of your duty to market the oil for the mutual benefit of yourself and the lessor, ONRR will establish a value based on other relevant matters.

(i) The ONRR will not use this provision to simply substitute its judgment of the market value of the oil for the proceeds received by the seller under an arm's-length sales contract.

(ii) The fact that the price received by the seller under an arm's-length contract is less than other measures of market price is insufficient to establish breach of the duty to market un-

less ONRR finds additional evidence that the seller acted unreasonably or in bad faith in the sale of oil produced from the lease.

(d) You must base value on the highest price that the seller can receive through legally enforceable claims under the oil sales contract. If the seller fails to take proper or timely action to receive prices or benefits to which it is entitled, you must base value on that obtainable price or benefit.

(1) In some cases the seller may apply timely for a price increase or benefit allowed under the oil sales contract, but the purchaser refuses the seller's request. If this occurs, and the seller takes reasonable documented measures to force purchaser compliance, you will owe no additional royalties unless or until the seller receives monies or consideration resulting from the price increase or additional benefits. This paragraph (d)(1) does not permit you to avoid your royalty payment obligation if a purchaser fails to pay, pays only in part, or pays late.

(2) Any contract revisions or amendments that reduce prices or benefits to which the seller is entitled must be in writing and signed by all parties to the arm's-length contract.

(e) If you or your affiliate enter(s) into an arm's-length exchange agreement, or multiple sequential arm's-length exchange agreements, then you must value your oil under this paragraph.

(1) If you or your affiliate exchange(s) oil at arm's length for WTI or equivalent oil at Cushing, Oklahoma, you must value the oil using the NYMEX price, adjusted for applicable location and quality differentials under paragraph (e)(3) of this section and any transportation costs under paragraph (e)(4) of this section and §§ 1206.56 and 1206.57.

(2) If you do not exchange oil for WTI or equivalent oil at Cushing, but exchange it at arm's length for oil at another location and following the arm's-length exchange(s) you or your affiliate sell(s) the oil received in the exchange(s) under an arm's-length contract, then you must use the gross proceeds under your or your affiliate's arm's-length sales contract after the

exchange(s) occur(s), adjusted for applicable location and quality differentials under paragraph (e)(3) of this section and any transportation costs under paragraph (e)(4) of this section and §§ 1206.56 and 1206.57.

(3) You must adjust your gross proceeds for any location or quality differential, or other adjustments, you received or paid under the arm's-length exchange agreement(s). If ONRR determines that any exchange agreement does not reflect reasonable location or quality differentials, ONRR may adjust the differentials you used based on relevant information. You may not otherwise use the price or differential specified in an arm's-length exchange agreement to value your production.

(4) If you value oil under this paragraph, ONRR will allow a deduction, under §§ 1206.56 and 1206.57, for the reasonable, actual costs to transport the oil:

(i) From the lease to a point where oil is given in exchange; and

(ii) If oil is not exchanged to Cushing, Oklahoma, from the point where oil is received in exchange to the point where the oil received in exchange is sold.

(5) If you or your affiliate exchange(s) your oil at arm's length, and neither paragraph (e)(1) nor (e)(2) of this section applies, ONRR will establish a value for the oil based on relevant matters. After ONRR establishes the value, you must report and pay royalties and any late payment interest owed based on that value.

(f) You may not deduct any costs of gathering as part of a transportation deduction or allowance.

(g) You must also comply with § 1206.54.

[72 FR 71241, Dec. 17, 2007]

§ 1206.53 How do I determine value for oil that I or my affiliate do(es) not sell under an arm's-length contract?

(a) The unit value of your oil not sold under an arm's-length contract is the

volume-weighted average of the gross proceeds paid or received by you or your affiliate, including your refining affiliate, for purchases or sales under arm's-length contracts.

(1) When calculating that unit value, use only purchases or sales of other like-quality oil produced from the field (or the same area if you do not have sufficient arm's-length purchases or sales of oil produced from the field) during the production month.

(2) You may adjust the gross proceeds determined under paragraph (a) of this section for transportation costs under paragraph (c) of this section and §§ 1206.56 and 1206.57 before including those proceeds in the volume-weighted average calculation.

(3) If you have purchases away from the field(s) and cannot calculate a price in the field because you cannot determine the seller's cost of transportation that would be allowed under paragraph (c) of this section and §§ 1206.56 and 1206.57, you must not include those purchases in your weighted-average calculation.

(b) Before calculating the volume-weighted average, you must normalize the quality of the oil in your or your affiliate's arm's-length purchases or sales to the same gravity as that of the oil produced from the lease. Use applicable gravity adjustment tables for the field (or the same general area for like-quality oil if you do not have gravity adjustment tables for the specific field) to normalize for gravity.

Example to paragraph (b): 1. Assume that a lessee, who owns a refinery and refines the oil produced from the lease at that refinery, purchases like-quality oil from other producers in the same field at arm's length for use as feedstock in its refinery. Further assume that the oil produced from the lease that is being valued under this section is Wyoming general sour with an API gravity of 23.5°. Assume that the refinery purchases at arm's length oil (all of which must be Wyoming general sour) in the following volumes of the API gravities stated at the prices and locations indicated:

10,000 bbl	24.5°	\$34.70/bbl	Purchased in the field.
8,000 bbl	24.0°	34.00/bbl	Purchased at the refinery after the third-party producer transported it to the refinery, and the lessee does not know the transportation costs.
9,000 bbl	23.0°	33.25/bbl	Purchased in the field.